Supreme Court, U.S.
FILED

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In The

Supreme Court of the United States

OCTOBER TERM, 1996

JOSEPH BENEDICT HALASH,
Petitioner,

v.

THE PEOPLE OF THE STATE OF MICHIGAN,
Respondent.

Petition for Writ of Certiorari to the Supreme Court of Michigan

---

PETITION FOR WRIT OF CERTIORARI

J. Michael Hill (P-29769)*
J. MICHAEL HILL, P.C.
7340 Park Avenue
Allen Park, Michigan 48101
(313) 388-5710

*Counsel of Record

56 pp

QUESTIONS PRESENTED FOR REVIEW

I.

UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION, WAS THE SHERIFF'S DEPUTY AUTHORIZED TO STOP DEFENDANT/APPELLANT WHERE DEFENDANT/APPELLANT WAS DRIVING WITHIN HIS LANE, DID NOT CROSS OVER THE CENTER LINE, WAS NOT SPEEDING, WAS NOT DRIVING EXCESSIVELY SLOW, AND WAS OTHERWISE NOT DOING ANYTHING WRONG AS FAR AS THE DEPUTY COULD TELL.

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MICHIGAN COMPILED LAWS

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M.C.L.A. 257.626; M.S.A. 9.2326

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MICHIGAN COURT RULES

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OPINIONS BELOW

Michigan v. Halash, Unpublished Order of the 20th Judicial District Court for the State of Michigan, decided July 24, 1995 (Case no. 15308), attached hereto as Appendix A.

Michigan v. Halash, Unpublished opinion of 20th Judicial District Court for the State of Michigan, decided July 24, 1995(Case No. 15308), Attached hereto as Appendix B.

Michigan v. Halash, Unpublished Order of the 3rd Circuit Court for the State of Michigan, decided May 21, 1996 (Case No. 96-601226 AR), Attached hereto as Appendix C.

Michigan v. Halash, Unpublished Order of the Michigan Court of Appeals, decided August 16, 1996 (Docket No. 195477), Attached hereto as Appendix D.

People v. Halash, Unpublished Order of the Michigan Supreme Court, decided November 22, 1996 (Docket No. 107225), Attached hereto as Appendix E.

STATEMENT OF GROUNDS ON WHICH JURISDICTION IS INVOKED

Petitioner, JOSEPH BENEDICT HALASH, by and through his attorneys, J. MICHAEL HILL, P.C., seeks review of the September 6, 1996 Order of the Michigan Supreme Court which denied leave to appeal the August 16, 1996 Order of the Court of Appeals of the State of Michigan. The Michigan Court of Appeals had denied leave to appeal from the May 21, 1996 Order of Wayne County Circuit Court; said Order of the Wayne County Circuit Court affirmed the decision of the 20th Judicial District Court which denied Petitioner's Motion to Dismiss and Motion for Reconsideration.

The decisions of the Michigan Supreme Court and the lower Courts of the State of Michigan are contrary to the Fourteenth Amendment to the United States Constitution and to the determination of this Honorable Court made in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1968, 20 L. Ed. 2d 889 (1968) with respect to a valid stop of motorist by a law enforcement officer. Thus, jurisdiction for review by this Honorable Court is appropriate under 28 U.S.C. 1255 and Supreme Court Rule 10.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

APPLICABLE CONSTITUTIONAL PROVISIONS: US CONST., AM XIV

Section 1. Citizens of the United States.
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPLICABLE STATUTES; MICHIGAN COMPILED LAWS

M.C.L.A. 257.625 (1); M.S.A. 9.2325 (1), a person, whether licensed or nor, who is under the influence of intoxicating liquor or a controlled substance, or a combination of upon a highway or other place open to the general public, including an area designated for the parking of vehicles, within the state. A peace officer may, without a warrant, arrest a person when the peace officer has reasonable cause to believe that the person was, at the time of an accident, the driver of a highway or other place open to the general public, including an area designated for the parking of vehicles, in the state while in violation of this subsection or of subsection (2), or of a local ordinance substantially corresponding to this subsection or subsection (2).

M.C.L.A. 257.625 (7); M.S.A. 9.2325 (7), As part o the sentence for a violation of subsection (1) or (2), or a local ordinance substantially corresponding to subsection (1) or (2), the court may order the person to perform service to the community, as designated by the court, without compensation, for a period not to exceed 12 days. The person shall reimburse the state or appropriate local unit of government for the cost of insurance incurred by the state of local unit of government as a result of the person's activities under this subsection.

M.C.L.A. 257.625 (9); M.S.A. 9.2325 (9), Before accepting a plea of guilty under this section, the court shall advise the accused of the statutory consequences possible as the result of a plea of guilty in respect to suspension or revocation of an operator's or chauffeur's license, the penalty imposed for violation of this section, and the limitation on the right of appeal.

STATEMENT OF THE CASE

On February 19, 1995 the Petitioner was pulled over by Deputy Sheriff Richard LeGendre.

Deputy Sheriff Richard LeGendre, shortly before pulling the Petitioner over, had observed that Petitioner was, according to the Police Report, swaying back and forth within the right lane.

Petitioner was not weaving from lane to lane, he was not speeding, he was not driving excessively slow, he was not breaking any of the traffic laws whatsoever as far as Deputy Sheriff LeGendre could tell. In effect, there was nothing wrong with his driving and the only reason he was stopped was because he was weaving within his lane. (Please see Appendix F.)

Because he was weaving within the right lane, Petitioner was pulled over, a roadside sobriety test was conducted and he was arrested for driving while under the influence of intoxicating liquor and having a blood alcohol content of .10 or higher.

A Motion to Dismiss was brought on the grounds of an improper stop and an Evidentiary Hearing was held on Wednesday, June 14, 1995. In his Brief in Support of Motion to Dismiss, Petitioners counsel stated as follows:

> The Fourth Amendment to the Constitution of the United States protects citizens against unreasonable searches and seizures. Under the Fourth Amendment securing a warrant is necessary before a search is made. Any evidence obtained as a result of a search and seizure with the benefit of a warrant can not be used against the citizen. A search and seizure made incident to a valid arrest is a well recognized exception to the warrant requirement. *Preston v. United States* 376 U.S. 364, 84 S.Ct.

> One requirement of a valid arrest without a warrant is that the officer must have a probable cause to believe that the individual had committed or was in the processes of committing an offense. Probable Cause has been defined as personal knowledge of the arresting officer of facts which are sufficient to warrant a prudent person in believing that the individual had or was committing an offense. The reasonableness of a search without a warrant is not measured by the results, but is determined by the information in the procession of the officer prior to making it.(Please see Appendix G.)

At the June 14, 1995 Hearing, counsel for Petitioner further argued the Federal Question as follows:

> Mr. Hill: An ordinary citizen when obeying the law is supposed to be free of intrusion from the police. The police are not authorized to stop anybody just because they're curious. They have to have a reason. The individual when choosing to control his conduct is entitled to believe that if he behaves within the law that he is free from Governmental intrusion. (Please see Appendix H.)

At the conclusion of the Evidentiary Hearing, the Trial Judge, the Honorable Mark J. Plawecki, denied the Petitioners Motion to Dismiss finding, "Well, after reviewing the testimony it just comes down to a question

of did the officer have probable cause and I find that under these facts he did." (Please see Appendix I.)

The Petitioner then timely filed a Motion for Reconsideration, which stated, among other things, that "Because there was no 'suspicious activity' offered, the factual foundation of *Terry vs. Ohio* were not present in *Parisi*, nor were they present in the instant case. A Motion for Dismissal must be granted. (See pages 2 & 3 in Brief in Support of Defendant Motion for Reconsideration, attach hereto as Appendix J.) (See also *Terry v. Ohio* 392 U.S. 1, 88 s.CT 1968, 20 L.ED. 2d 889 (1968).

The Motion for Reconsideration was also denied. Judge Plawecki wrote an Opinion in this matter which is attached hereto as Petitioner Appendix B.

On December 13, 1995 a plea bargain was worked out wherein Petitioner pled guilty to driving with a blood alcohol content of .10 or higher with the provision, pursuant to the agreement of the prosecutor and pursuant to a conversation with the Trial Court in Chambers wherein it was agreed that there would be no imposition of the sentence while the Petitioner appealed the Court's refusal to grant his Motion to Dismiss the case for an improper stop. In fact, the sentencing did not take place at all and will only occur if the Appellate Courts refuse to overturn the conviction.

The Petitioner filed a timely Claim of Appeal with the Wayne County Circuit Court. Briefs were submitted albeit late by the Prosecutor and oral argument was heard on May 3, 1996. Petitioner, again, relied, in part, on *Terry v. Ohio, Supra*, in pressing his argument that there was not probable cause for the stop. The Circuit Court orally denied the claim of appeal claiming that the applicable standard of review was abuse of discretion and apparently finding that

Judge Plawecki did not abuse his discretion.

The Petitioner filed a timely petition for leave to appeal in the Court of Appeals of the State of Michigan on June 10, 1996. In his Brief and Support of Application for leave to appeal, Petitioner again relied on *Terry vs. Ohio,* Supra, to put forth his argument that there was no probable cause for the stop. (Please see page four of Petitioners Brief and Support of Application for leave to appeal to the Michigan Supreme Court attached hereto as Appendix K.). On August 16, 1996 said Court of Appeals denied the Petitioners request for leave to appeal simply saying that "the application for leave to appeal is denied for lack of merit in the grounds presented."

The Petitioner filed a timely application for leave to appeal to the Supreme Court of Michigan on September 6, 1996. Petitioner again, relied on *Terry vs. Ohio, Supra,* to support his claim that there was no probable cause for the stop. (Please see Appendix K.) On November 25, 1996 the Michigan Supreme Court denied the Petitioner's request for leave to appeal because they were "not persuaded that the questions presented should be reviewed by said Court".

Petitioner now petitions this Honorable Court for Writ of Certiorari to the Supreme Court of Michigan.

ARGUMENT

Under the Fourteenth Amendment of the United States Constitution, was the Sheriff's Deputy was not authorized to stop Petitioner where Petitioner was driving within his lane, did not cross over the center line, was not speeding, was not driving excessively slow, and was otherwise not doing anything wrong as far as the Deputy could tell.

The leading State of Michigan case regarding this issue is *People v. Parisi*, 393 Mich. 31, 222 NW2d 757 (1974), the Supreme Court of Michigan decided a very similar situation as presented herein. The Supreme Court of Michigan and the *Parisi* Court reversed both the Trial Court and the Michigan Court of Appeals Decision to allow the Petitioner's conviction of possession of heroin to stand.

In *Parisi* the police advanced three reasons to support the reasonableness of their stop.

The first was that the vehicle in question was traveling at a speed of 25 miles per hour in a 45 mile per hour zone. In regard to that issue the High Court stated that:

> Given the absence of a minimum speed requirement, erratic driving, interference with traffic or some other reason of SUBSTANCE, we must conclude that this alone was not sufficient to warrant a stop." (*Id.* 759, Emphasis added.)
>
> Second was suspected violation of the Saline curfew Ordinance. Although the occupants of the car were all Over 16, and the curfew applies to those under 16, such a miscalculation of age might be understandable. However, the curfew prohibitions do not apply to those proceeding through the city in an automobile. It can hardly be found that these persons were loitering, idling or congregating on the streets through which they drove. (*Id.* 759, emphasis added.)

There, of course, was no suggestion in the Petitioner case that the elderly Petitioner was under the age of curfew.

Finally, the officer in the *Parisi* case was concerned that the occupants were ill. The *Parisi* Court stated in language that is chillingly appropriate to the Petitioner case:

> No physical observation was placed in evidence to support this concern excepting the 25 MPH speed. There Was no testimony indicating that the vehicle was operated In a manner posing a danger to person or property." Compare M.C.L.A. 257.626, M.S.A. 9.2326 and M.C.L.A. 257.626b, M.S.A. 9.2326 (2). The record does not afford sufficient indication that the reason expressed justified the stop of the automobile.

The *Parisi* Court went on to quote other Michigan cases.

> In good conscience we cannot find that, as a totality, the three stated concerns of the police proved a reasonable basis for the stop under the facts presented. Over the years, stops similar to that in this case have failed to satisfy the standards of this Court. In *People vs. Roache*, 237 Mich. 215, 211 N.W. 742 (1927), defendant's car was stopped by a motorcycle policeman. The officer stopped the car because he "suspected the men because they looked suspicious to me; they were watching me as I passed, as I went on the road on the motorcycle." He also felt that "they were driving slower than an ordinary person, a person on the highway.: A search of the car disclosed that defendant was illegally transporting intoxicants. In reversing the conviction, the Court, citing language from *People vs. Kamhout*, 227 Mich. 172, 198 N.W. 831 (1924) indicated that the facts of *Roache* would not lead "'a prudent and careful person, having due regard

for the rights of others' to have reasonable and probable cause to believe that liquor was being unlawfully transported in defendant's automobile.

The stop in *People v. Stein*, 265 Mich. 610, 251 NW 788, 92 A.L.R. 481 (1933), involved a taxicab in which defendant was riding. The officer's attention was drawn by the cab's speed ("about 32 miles per hour") and a motion by defendant "as if he was taking something out of his pocket, and putting it on the seat beside him' or behind him"). The Court said the record left "no doubt that the officers arrested defendants on general suspicion and not for a specific offense." The conviction was reversed because the "general suspicion that, perhaps, a crime is being committed by defendants, does not justify an arrest.

No "suspicious activity" has been offered here nor any testimony providing a reasonable basis for stopping the automobile. The factual foundations for the decisions in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct., 1968, 20 L.Ed.2d 889 (1968) and *Adams v. Williams*, 407 U.S. 143, 92 S. Ct. 1921, 32 L. Ed. 2d 612 (1972) are not present here. (222 N.W. 2d 757, 759, 760)

People v. Lyons, 195 Mich. App. 248, 151 (1992) reads as follows:

The trial court's findings of fact are reviewed under the Clearly erroneous standard of review. MCR 2.613 (C). Findings of fact are clearly erroneous if, after review of the entire record, this Court is left with a definite and firm conviction that a mistake has been made. *People v. Gistover*, 189 Mich. App. 44, 46; 472 NW2d 27 (1991).

People v. Gistover, 189 Mich. App. 44, 46; (1991) reads as follows:

> We must also be mindful of the standard by which we review a trial court's findings of fact. Those findings will not be disturbed on appeal unless they are clearly erroneous. MCR. 2.613 (C). A finding is clearly erroneous if, after a review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. *People v. Stoughton*, 5 Mich App 219, 227; 460 NW2d 591 (1990).

In the present case, Petitioner, as far as the Officer could tell was not doing anything wrong.

As indicated earlier, in essence, Officer LeGendre pulled Petitioner over because he was weaving within the right lane. Please see Page 8, lines 19-20 of the June 14, 1995 Transcript attached hereto as Appendix L wherein Officer LeGendre also indicated that the Motion was smooth.

Officer LeGendre was unable to indicate the distance that it took for the Escort to travel from the left hand lane divider and right hand lane over towards the curb, but once again reiterated in response to Prosecutor Frazier's question that it was a smooth move.

Officer LeGendre also stated on Page 9, line 25 o the June 14, 1995 Transcript attached hereto as Appendix M that, "He was either going the speed limit or slightly under it." On page 10, lines 2-12 of the June 14, 1995 Transcript attached hereto as Appendix N, Officer LeGendre indicated that the tire on the right side of the Escort came within six (6) inches of the curb and that once again his movement was relatively smooth. Again, the matter each time was that he would come within sic (6) inches of the right side in a

relatively smooth manner and then go over to the divider mark on the other side of the lane, but nonetheless stayed within the lane. Indeed, Officer LeGendre stated:

"No. It was--it was a real smooth, like he was going like This, just back and forth." (Witness demonstrating with his Hands.)

(Please see Page 11, lines 10-11 of the June 14, 1995 Transcript attached hereto as Appendix O.)

Mr. Frazier asked:

"Q: What was going through your mind as you made the observations that you just told us about?

A: I didn't know at the time if he was intoxicated, if he was possibly falling asleep at the wheel, or if possibly he had some kind of medical problem."

(Please see Page 12, lines 3-7 of the June 14, 1995 Transcript attached hereto as Appendix P).

Indeed, Officer LeGendre's observations were as follows:

"Q: Okay. And, essentially, did you observe him go from left to the right, from the right to the left, and then from the left to the right, and then right to the left essentially twice?

A: Two to three times.

Q: Yeah. And that was the extent of your observation of the traveling within the lane?

A: That's correct."

(Please see page 20, lines 3-10 of the June 14, 1995 Transcript attached hereto as Appendix Q).

Officer LeGendre also made it clear that:

"Q: And he never hit the curb on the right side, correct?

A: No, he did not."

(Please see Page 20, lines 18-19 of the June 14, 1995 Transcript attached hereto as Appendix Q.)

Other than a spirited colloquy between Officer LeGendre and Mr. Hill, counsel for Petitioner, over whether or not the

bar lines constitute part of one's lane, there was never any claim that he was not perfectly within his lane.

During cross-examination Officer LeGendre admitted:

"Q: Now, you've also indicated on direct examination that you didn't know what was going on with the Defendant, correct?

A: I indicated that I didn't know if he was falling asleep at the wheel, or if he is intoxicated, or if possible he's having some type of medical problem at the time.

Q: Or there could have been something wrong with his car, correct?"

A: That's a possibility.

(Please see Page 22 lines 19-23 and Page 23 Line 1 of the June 14, 1995 Transcript attached hereto as Appendix R).

Essentially, *People v. Parisi* stands for the proposition that in order to stop someone the Officer has to have more than a hunch.

In Judge Plawecki's written opinion Denying the Defendant's Motion for Reconsideration the Trial Court focused on the word erratic driving in the *parisi* opinion and in effect claimed that driving back and forth two to three times within one's own lane could be considered erratic driving.

Erratic, however, would not appear to be a term that could be applied to Petitioner's driving since he appears to have been driving in a set pattern, in a smooth, gradual process. Certainly, the way that Petitioner was driving would appear to be in direct conflict with any notion of erratic.

Given the fact that *Parisi* governs in Michigan, the only possible way that this stop could be considered justified given the fact that *Petitionr* was obviously not breaking any traffic laws and was not driving erratically, would be a reason of substance.

The fact that *Petitioner* was not driving in a perfectly

straight line is not a matter of substance. The fact that Petitioner was obeying the law in not a matter of substance.

One of the things that makes this Country great is that the police cannot pull people over willy nilly to see if they are breaking the law. There has to be an articulated reason for an officer to pull someone over.

Instead of having some sort of suspicion based on fact that Petitioner was doing something illegal, Officer LeGendre did not know what was going on.

Indeed, Petitioner had a perfect right to drive back and forth within his own lane, since the law simply requires that a driver remain in his lane. If the Legislature wanted someone to be required to drive in a perfectly straight manner within a lane, it would pass a Law requiring everyone to drive perfectly straight. From a realistic standpoint, however, it is impossible for a person to drive a car perfectly straight which is the reason the Law does not require a person to drive perfectly straight. Indeed, if someone wanted to appear odd and to set themselves apart from the run of the mill car drivers there would be no better way to appear unnatural than to drive perfectly straight within a lane.

It should also be pointed out that Officer LeGendre's observations were for a relatively short period of time and that he only observed Petitioner driving in a smooth, gradual manner from the right side of the lane to the left side of the lane two or three times.

It should also be pointed out that a lane is not a very big area and that moving from the right side to the left side is only a matter of a few feet at most.

In fact, this whole criticism of Petitioner by Officer LeGendre reminds this author of previous cases wherein policemen have pulled people over for almost not stopping at a stop light or almost running a red light.

There is not penalty for barely being in compliance with

the law. The law is simply concerned as to whether or not someone is complying with the law. If someone is complying with the law, then they have not broken it.

In effect, in the form of an analogy to grades in High School if 90 out of 100 is an "A", the student that gets a "A" with a 90 has just as good of a grade as the student who gets an "A" from 100, they are both "A's".

The *Parisi* Court in their quotation of *People v. Stein* concluded that:

"the general suspicion that, perhaps, a crime is being committed by defendants, does not justify an arrest." *People v. Stein*, 222 NW2d, 757 760.

The officers suspicion in *Parisi* that the occupants were sleeping is strikingly similar to officer LeGendre's speculation in the instant case when he stated:

A: I didn't know at the time if he was intoxicated, if he was possibly falling asleep at the wheel, or if possibly he had some kind of medical problem."

(Please see Appendix Q hereto).

In *Parisi* the Officer's only concern about the Defendants driving was the fact that he was going 25 in a 45 mile per hour zone.

In the Petitioner case the only concern was that he was driving smoothly from side to side within his own lane.

In both cases, there was no testimony indicating that, "the vehicle was operating in a manner posing a danger to a person or property". *People v. Stein*, 222 NW2d 757, 759.

Just like in *Parisi*, in the Petitioners case the record does not afford, "a reasonable basis for stopping the automobile." *People v. Stein*, 222 NW2d, 757, 760.

By the same token here, Petitioner who stayed within his lane was not as far as the Officer could tell, violating the law

and consequently was entitled to a presumption of privacy which would not involve him being stopped. We are not talking about horseshoes or hand grenades here, we are talking about the law.

It should be pointed out that for purposes of the Motion to have the case dismissed and for this appeal that Petitioner is not challenging the credibility of Officer LeGendre of Officer LeGendre's version of the facts. Even if everything that Officer LeGendre says is Gospel truth, clearly Judge Plawecki should have dismissed the charges. Clearly it was reversible error for Judge Plawecki to not dismiss and for Judge Callahan to not reverse Judge Plawecki.

In fact, it should be pointed out that Deputy LeGendre's candor is amazingly refreshing. He admitted that Petitioner was not speeding, that he was driving smoothly within his lane and he admitted that he did not know if Petitioner was intoxicated. In fact, the Petitioners right to a dismissal is based entirely on Officer LeGendre's testimony since no one else testified at the Evidentiary Hearing. It is assumed, for purposes of the Motion to Dismiss and for this appeal that Officer LeGendre was telling the truth. Since for purposes of this appeal and for the Motion to Dismiss, the Petitioner is claiming that Officer LeGendre is telling the truth Judge Plawecki's special opportunity as the trial court judge to evaluate the credibility of Officer LeGendre is simply not a factor.

It is clear that Petitioner was not violating any laws and that his driving was not erratic. There was no reason of substance articulated by Officer LeGendre existing at the time of the stop to justify Petitioner being stopped. In fact, Officer LeGendre admitted that he did not know if Petitioner was intoxicated.

Clearly, if this court had been sitting in Judge Plawecki's place, it would have dismissed the case. Clearly, if this court

had been sitting in Judge Callahan's place, it would have reversed Judge Plawecki. It certainly was clearly erroneous for Judge Plawecki to not dismiss the charge. It was certainly clearly erroneous for Judge Callahan to not reverse Judge Plawecki. Although the applicable standard of review is not abuse of discretion, even if it were this court should reverse since clearly it was an abuse of discretion for Judge Plawecki to not dismiss the charges and clearly it was an abuse of discretion for Judge Callahan to not reverse Judge Plawecki.

CONCLUSION

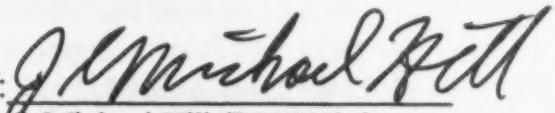
The Courts of the State of Michigan are turning a blind eye to the due process rights of the petitioner even though to do so flies in the face of the decision of this Honorable Court in *Terry v. Ohio, Supra.* In the zeal to punish anyone who would drink and drive the basic constitutional right of due process is cast aside to affirm a conviction improperly obtained. If the improper stop is allowed to stand in this case, then any driver in the State of Michigan could be pulled over at any time, without justification, giving police officers the opportunity to search for something, anything, which would incriminate the driver, and, if said officers are lucky enough to find something, such evidence could be used to support a conviction. It was to avoid just such blatant violation of due process that this Court made it's finding in *Terry v. Ohio, Supra.*.

The Petitioner requests that this Honorable Court grant his Petition for Writ of Certiorari and further that this Court reverse Judge Callahan and order that the Plaintiff's Motion to Dismiss the charge for unreasonable stop is granted and

that the charges against Petitioner be dismissed and that his bond money be refunded.

Respectfully submitted,

J. MICHAEL HILL, P.C.

BY: 

J. Michael Hill (P29769) *
7340 Park Avenue
Allen Park, Michigan 48101
(313) 388-5710

*Counsel of Record

APPENDIX

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Halash.Bri/Misc#1/97/kz

APPENDIX A

STATE OF MICHIGAN
IN THE DISTRICT COURT FOR THE
20th JUDICIAL DISTRICT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

vs.

Case No. 082526/C015308
Hon. Mark J. Plawecki

JOSEPH BENEDICT HALASH,
Defendant.

Kellie Gleason (P-51410)
Assistant Wayne County Prosecutor
Attorneys for Plaintiff
3000 Henry Ruff Road
Westland, Michigan 48186
(313) 278-8310
FAX: (313) 326-7707

J. MICHAEL HILL, P.C.
J. Michael Hill (P-29769)
David L. Morris (P-35973)
Attorneys for Defendant
7340 Park Avenue
Allen Park, Michigan 48101
(313) 388-5710
FAX: (313) 388-4550

ORDER OF CONVICTION

AT A SESSION OF SAID COURT held in the
20th District Court, Dearborn Hts., MI

ON: DEC 22, 1995
PRESENT: Hon. MARK J. PLAWECKI
District Court Judge

Before this Court is the matter of the People of the State of Michigan vs. Joseph Benedict Halash. Mr. Halash is charged with the alternate offenses of driving while under the influence of intoxicating liquor and/or driving with a blood alcohol content of .10 or higher. Mr. Halash previously brought a Motion to have the charges against him dismissed due to the fact that according to Mr. Halash, there had been an improper stop without justification. After an Evidentiary Hearing wherein Wayne County Deputy Sheriff, R. Legendre testified, the Court denied the Defendant's Motion to Dismiss the case. The Defendant filed a Motion for Reconsideration and the Court issued a written Opinion denying the Motion for Reconsideration on July 24, 1995.

The Wayne County Prosecutor's Office and the Defendant have worked out a plea bargain wherein the People have offered to dismiss the charge of driving while under the influence of intoxicating liquor in return for Mr. Halash pleading guilty to driving with a blood alcohol content of .10 or higher with the provision that the Defendant will be able to Appeal this Court's refusal to dismiss the case for the alleged improper stop and that the imposition of penalties shall be completely stayed while the matter is being Appealed and until said case is res judicata. The Court recognizes the inherent injustice of the situation wherein someone could be punished for a crime and then have their conviction reversed later on and will grant the Defendant's request that there be a stay of the imposition of all penalties. It shall be further noted

that the Assistant Wayne County Prosecutor present in Court on Wednesday, December 13, 1995 does not object to the stay of imposition of penalties and that the Wayne County Sheriff's Office does not object to the stay. The People have also agreed to dismiss any annancement provisions and the penalties for the Defendant pleading to UBAL it will be the same as if he had no prior convictions.

WHEREUPON IT IS HEREBY ORDERED that the plea admitted by Joseph Halash to the charge of driving with a blood alcohol content of .10 or higher is accepted and he is deemed convicted of said offense;

IT IS FURTHER ORDERED that the alternate charge of driving while under the influence of intoxicating liquor is dismissed and that the Defendant may Appeal this Court's refusal to dismiss the case for the alleged improper stop and that by pleading to an unlawful blood alcohol content of .10 or higher, the Defendant, Joseph Benedict Halash is not waiving his right to Appeal;

IT I FURTHER ORDERED that all penalties will be stayed until the matter is res judicata;

IT IS FURTHER ORDERED that the Defense Counsel, J. Michael Hill has indicated that the appellate process could be quite lengthy and that this plea is accepted with the Trial Court being cognizant that there may be a sizeable length of time between Wednesday, December 13, 1995 and the matter becoming res judicata in the Appellate system;

IT IS FURTHER ORDERED that the Defendant will be sentenced if he is not successful in his Appeals once the matter has become res judicata and that the Court in addition to the other penalties that it may wish to impose, may also impose costs on the Defendant for the cost of having brought jurors in on Wednesday, December 18, 1995;

IT IS FURTHER ORDERED that the enhancement provisions requested by the Assistant Wayne County Prosecutor's Office who had a warrant dated Friday, December 8, 1995 are hereby deemed dismissed and that the penalties for Mr. Halash pleading for unlawful blood alcohol content shall be no greater than for someone with no priors pleading to unlawful blood alcohol content.

_____

District Court Judge

APPENDIX B

STATE OF MICHIGAN
IN THE 20TH DISTRICT COURT
FOR THE COUNTY OF WAYNE

THE PEOPLE OF THE
STATE OF MICHIGAN,
Plaintiff,

vs. Case No. 15308

JOSEPH BENEDICT HALASH,
Defendant.

_____/

OPINION

At a session of said Court held on:
July 24, 1995
PRESENT: HON. MARK J. PLAWECKI
District Judge

Defendant moves for reconsideration of his motion to dismiss which was previously denied by this Court. Defendant cites People v Parisi, 393 Mich 31, 222 NW2d 757 (1974), where the court held that:

> "Given the absence of a minimum speed requirement, erratic driving, interference with traffic or some other reason of substance, we must conclude that this alone was not sufficient to warrant a stop." (Id. 759)

In Parisi, the police gave as reasons for the stop:
1) the defendant was traveling 25 miles per hour; and,
2) the age of the occupants.
Here, the arresting officer testified that the defendant was "weaving back and forth touching the lane divider line which separated the right and the left hand lane

and it was going over toward the curb continuously."

"1. Not consistent or uniform; irregular."

The Court finds that such driving as testified to by the arresting officer here could be considered irregular, hence erratic.

Defendant also argues that the road on which he was stopped was loaded with "chuck" holes. However, the officer's testimony was that the weaving was slow, rather than abrupt, as would be the case if he were trying to avoid potholes.

The Court finds that under the Parisi standard the stop was not improper. Counsel did not cite, and this Court is not aware of, case law to indicate that erratic driving has a specific legal definition above and beyond and not including "weaving." Absent such a definition, defendant's motion for reconsideration must be denied.

_____

Mark J. Plawecki
District Judge

APPENDIX C

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF WAYNE

THE PEOPLE OF THE
STATE OF MICHIGAN,
Plaintiff-Appellee,
vs.
JOSEPH BENEDICT HALASH,
Defendant-Appellant.
_____/

Case No. 96-601226 AR
Hon. Michael J. Callahan

JOHN B. O'HAIR
Prosecuting Attorney
County of Wayne

TIMOTHY A. BAUGHMAN (P24381)
Chief of Research,
Training and Appeals

DOUGLAS P. DWYER (P39211
Assistant Prosecuting Attorney
12th Floor, 1441 St. Antoine
Detroit, Michigan 48226
(313) 224-2862

J. MICHAEL HILL, P.C.
J. Michael Hill (P39769)
David L. Morris (P35973)
Attorneys for Defendant-Appellant
7340 Park Avenue
Allen Park, Michigan 48101
(313) 388-5710
_____/

ORDER DENYING APPEAL AND AFFIRMING DISTRICT COURT'S DECISION

AT A SESSION OF SAID COURT held in the City-County Building, Detroit, Michigan
ON: May 21, 1996
PRESENT: HON. MICHAEL J. CALLAHAN
Circuit Court Judge

The Defendant having Appealed District Judge, Mark J. Plawecki's refusal to quash a warrant for an arrest for an improper stop, and further having Appealed Judge Plawecki's decision to deny the Defendant's Motion for Reconsideration, and the Appeal having been brought before Wayne County Circuit Court Judge Michael J. Callahan acting as an Appellate Judge in reviewing Judge Plawecki's decision, and oral argument having been heard in front of Judge Michael J. Callahan on Friday May 3, 1996, and Judge Michael J. Callahan having found that the applicable standard of review was abuse of discretion, and Judge Michael J. Callahan further having found that Judge mark J. Plawecki did not abuse his discretion;

IT IS HEREBY ORDERED and ADJUDGED that the Defendant's Appeal is denied and Judge Mark J. Plawecki's Decision Denying the Motion to Dismiss and Denying the Motion for Reconsideration is hereby affirmed.

MICHAEL J. CALLAHAN
Circuit Court Judge

APPENDIX D

Court of Appeals, State of Michigan

ORDER

People of MI v Joseph Benedict Halash
Docket# 195477

L.C.#96 601226 AR

Donald E. Holbrook,Jr.
Presiding Judge
Richard A. Bandstra
Jane E. Markey
Judges

The Court orders that the application for leave to appeal is DENIED for lack of merit in the grounds presented.

A true copy entered and certified by Ella Williams, Chief Clerk, on

August 16, 1996 — Date

Ella Williams
Chief Clerk

APPENDIX E

ORDER

Michigan Supreme Court
Lansing, Michigan

Entered: November 22, 1996
107225

James H. Brickley
Chief Justice

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH BENEDICT HALASH,

Defendant-Appellant.

Charles L. Levin
Michael F. Cavanagh
Patricia J. Boyle
Dorothy Comstock Riley
Conrad L. Mallett, Jr.
Elizabeth A. Weaver
Justices

SC: 107225
COA:195477
LC: 96-601226-AR

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

A That's a possibility.
Q Okay. Now, you did not give him a ticket for crossing lanes, did you?
A No, we are not allowed to. When we make an arrest for OUIL we are not allowed to write a ticket for whatever the stop was --
Q Oh, okay.
A --initially for.
Q He was not speeding?
A Um-um--no.
Q You have to say yes or no; okay. His speed, however was not excessively slow?
A No.
Q And the only reason you stopped him was because he was weaving, from my perspective, within his lane; and, from your perspective, weaving within his lane other than having his tire hit the bar line, is that correct?
A I stopped him because he was weaving back and forth from the right to the left.
Q Yeah. Within his lane or on the bar line?
A From the bar line to the edge of the roadway.
Q Yeah. And, certainly, in terms of the right side he was always within his lane?
A Yes.
Q Okay.

APPENDIX G

STATE OF MICHIGAN
IN THE DISTRICT COURT FOR THE
20TH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

Case No. 082526/C015308

vs.

JOSEPH BENEDICT HALASH,
Defendant.

_____/

J. MICHAEL HILL, P.C.
J. Michael Hill (P29769)
William e. Gray (P45492)
Attorneys for Defendant
7340 Park Avenue
Allen Park, MI 48101
(313) 388-5710

KENNETH FRAZIER (P35193)
Attorney for Plaintiff
3000 Henry Ruff Road
Westland, Michigan 48185
(313) 278-8310

_____/

MOTION TO DISMISS

NOW COMES the Defendant, Benedict Joseph Halash, by and through his attorneys, J. MICHAEL HILL, P.C., and states unto this Honorable Court as follows:

1. That on February 19, 1995 the Defendant was pulled over by Deputy Sheriff Richard Legendre.

2. That shortly before pulling the Defendant over, Deputy Sheriff Richard Legendre had observed that the Defendant

was in the right lane, according to the Officer's report, swaying back and forth from the left lane divider lane to the right side of the roadway. In plain English, what the Defendant was doing, was driving within the right lane. In effect, doing nothing illegal, obeying the laws of the State of Michigan and doing nothing to justify him being pulled over.

3. That after the stop, Officer Richard LeGendre came to the opinion that Mr. Halash had been driving while under the influence of intoxicating liquor and arrested him.

4. That the stop was improper, there being no legal justification for it and consequently any of the evidence gathered as a result of the stop has been illegally obtained and must be barred and since there is no evidence against the Defendant, the charges must be dismissed.

WHEREUPON the Defendant prays that the charges of driving while under the influence of intoxicating liquor or in the alternative with a blood alcohol content of .10 or higher be dismissed, that his bond be returned and that the matter be closed.

J. MICHAEL HILL, P.C.

BY:_____

J. Michael Hill (P29769)
Attorney for Defendant
7340 Park Avenue
Allen Park, MI 48101
(313) 388-5710

BRIEF IN SUPPORT OF MOTION TO DISMISS

FACTS

Joseph Benedict Halash was pulled over on February 19, 1995 by Deputy Sheriff Richard Legendre. The reason that Deputy Sheriff Richard Legendre pulled him over was that

he had observed Mr. Halash swaying back and forth from the left lane divider line to the right side of the roadway, in effect, within his own lane. After stopping Mr. Halash, Officer Legendre came to the conclusion that he was driving while under the influence of intoxicating liquor and arrested him.

LAW AND ARGUMENT

MCLA 257.642. Laned roadways, traffic rules reads as follows:

(1) When a roadway has been divided into 2 or more clearly marked lanes for traffic the following rules in addition to all others consistent with this act shall apply:

(a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that the movement can be made with safety. Upon a roadway with 4 or more lanes which provides for 2-way movement of traffic, a vehicle shall be driven within the extreme right-hand lane except when overtaking and passing, but shall not cross the center line of the roadway except where making a left turn.

(b) Upon a roadway which is divided into 3 lanes and provides for -way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction, when the center lane is clear of traffic within a safe distance, or in preparation for a left turn, or where the center lane is at the time allocated exclusively to traffic moving in the same direction the vehicle is proceeding and the allocation is designated by official traffic control devices.

(c) Official traffic control devices may be erected directing specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles

shall obey the directions of the traffic control device.

(d) Official traffic-control devices may be installed prohibiting the changing of lanes on sections of roadway, and drivers of vehicles shall obey the directions of the traffic-control devices.

(2) A person who violates this section is responsible for a civil infraction.

The Fourth Amendment to the Constitution of the United States protects citizens against unreasonable searches and seizures. Under the Fourth Amendment securing a warrant is necessary before a search is made. Any evidence obtained as a result of a search and seizure without the benefit of a warrant cannot be used against the citizen. A search and seizure made incident to a valid arrest is a well recognized exception to the warrant requirement. Preston v United States, 376 U.S. 364, 84 S. Ct.

One requirement of a valid arrest without a warrant is that the officer must have probable cause to believe that the individual had committed or was in the process of committing an offense. Probable cause has been defined as personal knowledge of the arresting officer of facts which are sufficiant to warrant a prudent person in believing that the individual had or was committing an offense. The reasonableness of a search without a warrant is not measured by the results, but is determined by the information in the possession of the officer prior to making it.

Evidence against a citizen emanating from an illegal arrest, such as an arrest in which the officers did not have probable cause to arrest the citizen, should be suppressed by the Trial Court where the Evidence was procured by an exploitation of the illegality of the arrest. People v Woodward, 111 Mich App 528.

Further the detention, seizure and transportation of a

person while the police are trying to ascertain if a crime had been committed is an illegal arrest and evidence seized pursuant to the arrest should be suppressed. People v. Bloyd, 416 Mich 538.

In the present case, Deputy Richard Legendre had no probable cause to believe that a crime had been committed since Mr. Halash was in no way breaking the law in any way that could be seen by Deputy Richard Legendre. When you are not driving in an illegal way, you should not be pulled over. All evidence gathered after Mr. Halash was improperly detained, questioned and subsequently arrested including the field sobriety test, preliminary breath test, regular station breathalyzer test and any statements given to any sort of law enforcement officials must be suppressed by the trial court. For the above reasons, the Counts of operating while under the influence of intoxicating liquor and operating with an unlawful blood alcohol level must be dismissed.

WHEREUPON the Defendant prays that the above charge be dismissed that his bond be returned and that the case be closed.

J. MICHAEL HILL, P.C.

BY:_____

J. Michael Hill, P.C.(P29769)
Attorney for Defendant
7340 Park Avenue
Allen Park, MI 48101
(313) 388-5710

was worried whether or not he might have somebody falling asleep, which is--which is highly reasonable for the time of the evening.

The officer indicated that he thought he also might have somebody who had a medical condition and the officer also indicated that he might have somebody who was intoxicated.

Based on all of that, the officer would have been negligent in his duties to do anything else but to check on that driver to see what the problem was and certainly there was probable cause for the stop based on the driving of the defendant and we ask the Court to deny the defendant's motion.

MR. HILL: an ordinary citizen when obeying the law is supposed to be free of intrusions from the police. The police are not authorized to stop somebody just because they're curious. They have to have a reason. The individual when choosing to control his conduct is entitled to believe that if he behaves within the law that he is free from governmental intrusion.

In this instance, my client was doing nothing wrong as far as the officer could tell. His driving was within his lane. He did not hit the curb. He did not cross over the center line. He was not speeding. He was not driving excessively slow.

and there's no street lights, five miles an hour might be reasonable. On Warren with plenty of street lights and good smooth roads, I think, you know, five or ten miles an hour would be considered a hazard and an officer could give a person a ticket.

MR. FRAZIER: I would agree with that as well, Judge.

THE COURT: Well, after reviewing the testimony it just comes down to a question of did the officer have probable cause and I find that under these facts he did.

So I'm going to deny your motion, counsel.

MR. FRAZIER: Thank you, Judge.

(At 11.04 a.m., proceedings concluded).

* * * * *

APPENDIX J

STATE OF MICHIGAN
IN THE DISTRICT COURT FOR THE
20TH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Case No. 082526/C015308

vs.

JOSEPH BENEDICT HALASH,

Defendant,

_____/

J. MICHAEL HILL, P.C.
J. Michael Hill (P29769)
John C. Gonta (P45382)
Attorneys for Defendant
7340 Park Avenue
Allen Park, MI 48101
(313) 388-5710

KENNETH FRAZIER (P35193)
Attorney for Plaintiff
3000 Henry Ruff Road
Westland, Michigan 48185
(313) 278-8310

_____/

BRIEF IN SUPPORT OF DEFENDANT'S MOTION FOR RECONSIDERATION

FACTS

Joseph Benedict Halash was pulled over on February 19, 1995 by Deputy Sheriff Richard Legendre. The reason that Deputy Sheriff Richard Legendre pulled him over was that he had observed Mr. Halash swaying back and forth from the left lane divider line to the right side of the roadway, in effect, within his own lane. After stopping Mr. Halash, Officer Legendre came to the conclusion that he was driving while under the influence of intoxicating liquor and arrested him.

LAW AND ARGUMENT

In People v. Parisi, 393 Mich 31, 222 N.W. 2d 757 (1974), the Supreme Court for the State of Michigan decided a very similar situation as presented herein. The Parisi Court reversed both the trial court and the Appellate Court decision to convict the defendant of possession of herein. In Parisi, the police testified that there were two (2) reasons for the stop:

"First, the vehicle was traveling at a speed of 25 miles per hour ...;"

"Secondly, that the age of the occupants of the vehicle... led...to suspect...that one or more of them might be under the curfew age..." (Id. At 222 N.W. 2d at 758)

The Parisi, court held that:

Given the absence of a minimum speed requirement, erratic driving, interference with traffic or some other reason of SUBSTANCE, we must conclude that this alone was not sufficient to warrant a stop." (Id. 759, emphasis added.)

In the present situation the officer's report states the following:

"... Subject was traveling in the right lane swaying back and forth from the left lane..."

As can be easily seen, the Parisi court analysis compells a dismissal. This honorable court committed error by not

granting dismissal. This honorable court committed error by not granting the same. Justice requires a dismissal since there is NO factual allegation by the police to indicate ERRATIC driving or interference with traffic or some other reason of SUBSTANCE. "Swaying back and forth" just is not erratic driving. Plus, the road that defendant was traveling was loaded with "chuck" holes which can cause the "swaying back and forth".

The factual foundation of Terry v. Ohio were not present in Parisi, nor are they present in the instant case. A motion for dismissal must be granted.

CONCLUSION

There can be no other decision in this case except a full dismissal on the merits. As has been illustrated, there was no articulable reason for the stop. This honorable court must recognize the Parisi decision and dismiss; else, severe error will result.

J. MICHAEL HILL, P.C.

BY:_____

J. Michael Hill (P29769)
Attorney for Defendant
7340 Park Avenue
Allen Park, MI 48101
(313) 388-5710

the occupants were ill. The Parisi Court stated in language that is chillingly appropriate to the Halash case:

"No physical observation was placed in evidence to support this concern excepting the 25 MPH speed. There was no testimony indicating that the vehicle was operated in a manner posing a danger to person or property." Compare M.C.L.A. 257.626, M.S.A. 9.2326 and M.C.L.A. 257.626 b, M.S.A. 9.2326 (2). The record does not afford sufficient indication that the reason expressed justified the stop of the automobile.

The Parisi court went on to quote other Michigan cases.

"In good conscience we cannot find that, as a totality, the three stated concerns of the police provide a reasonable basis for the stop under the facts presented. Over the years, stops under the facts presented. Over the years, stops similar to that in this case have failed to satisfy the standards of this Court. In *People v. Roache*, 237 Mich. 215, 211 N.W. 742 (1927), defendant's car was stopped by a motorcycle policeman. The officer stopped the car because he "suspected the men because they looked suspicious to me; they were watching as I passed, as I went on the road on the motorcycle." he also felt that "they were driving slower than an ordinary person, a person on the highway." A search of the car disclosed that defendant was illegally transporting intoxicants. In reversing the conviction, the Court, citing language from *People v. Kamhout*, 227 Mich. 172,198 N.W. 831 (1924) indicated that the facts of Roache would not lead "'a prudent and careful person, having due regard for the rights of others' to have reasonable and probable cause to believe that liquor was being unlawfully transported in defendant's automobile."

The stop in *People v. Stein*, 265 Mich. 610,251 N.W. 788,

92 A.L.R. 481 (1933), involved a taxicab in which defendant was riding. The officer's attention was drawn by the cab's speed ("about 32 miles per hour") and a motion by defendant "" as if he was taking something out of his pocket, and putting it on the seat beside him' or behind him"). The Court said the record left "no doubt that the officers arrested defendants on general suspicion and not for a specific offense." The conviction was reversed because the "general suspicion that, perhaps, a crime is being committed by defendants, does not justify an arrest.

No "suspicious activity" has been offered here nor any testimony providing a reasonable basis for stopping the automobile. The factual foundations for the decisions in *Terry v. Ohio*, 392, U.S. 1, 88 S. Ct. 1968, 20 L.Ed.2d 889 (1968) and *Adams v. Williams*, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d612 (1972) are not present here." (222 NW2d 757,759,760)

People v. Lyons, 195 Mich. App. 248, 151 (1992) reads as follows:

The trial court's findings of fact are reviewed under the clearly erroneous standard of review. MCR 2.613 (C). Findings of fact are clearly erroneous if, after review of the entire record, this court is left with a definite and firm conviction that a mistake has been made. *People v. Gistover*, 189 Mich. App. 44, 46; 472 N.W. 2d 27 (1991)

People v. Gistover, 189 Mich. App. 44, 46; (1991) reads as follows:

We must also be mindful of the standard by which we review a trial court's findings of fact. Those findings will not

be disturbed on appeal unless they are clearly erroneous. M.C.R. 2.613 (C). A finding is clearly erroneous if, after a review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. *People v. Stoughton*, 185 Mich. App. 219, 227; 460 N.W.2d 591 (1990)

In the present case, Mr. Halash, as far as the Officer could tell was not doing anything wrong.

As indicated earlier, in essence, Officer LeGendre puled Mr. Halash over because he was weaving within the right lane. (Please see Page 8, lines 19 -20 of the June 14, 1995 Transcript attached hereto as Defendant-Appellant's Exhibit "4" attached hereto) wherein Officer LeGendre also indicated that the Motion was smooth.

Officer LeGendre was unable to indicate the distance that it took for the Escort to travel from the left hand lane divider and right hand lane over towards the curb, but once again reiterated in response to Prosecutor Frazier's question that it was a smooth move.

Right in that lane?
A He--when I first noticed him he weaved over to the left, then he weaved over to the right.
Q When the Escort weaved over to the left, did it touch the lane marker dividing the right hand lane from the left hand lane?
A Yes, he did.
Q And with which wheels did that Escort touch that lane divider?
A The left front and rear.
Q All right. So the left front and rear wheels of the Escort touched the lane divider between the right hand lane and the left hand lane?
A That's correct.
Q And do you recall about how long that Escort traveled on that lane divider before it went off?
A It wa just a short distance, ten feet, fifteen feet approximately.
Q All right. And was it--was it a slow weaving over to that lane divider, or was it a jerky type, abrupt weaving?
A It was relatively slow.
Q It traveled on that lane divider for a while and, let me ask, was it like a white broken line, lane divider?
A Yes.
Q All right. Fifteen feet or so, and then what happened

next?

A Then it weaved over to the right hand side up toward the curb area and drive for a while, then he would come back over to the left again.

Q All right. So it left the lane divider and weaved over towards the right hand curb?

A Yes.

Q Was that--again, was that a slow or a jerky motion or--

A No. It was--it was smooth.

Q And about what distance did it take the Escort then to travel from the lane divider between the left hand lane and the right hand lane over toward the curb?

A I couldn't--I couldn't even guess.

Q All right. Again, it was a smooth move?

A Yes.

Q Is your vehicle still three blocks behind or are you getting closer?

A No. I was closer to him at that--by the time that he went back to the right and went back to the left again.

Q All right. Do you recall the speed limit in that area?

A It's forty miles per hour.

Q And can you tell us what you noticed about the speed of the Escort during that first weave that you just told us about?

A He was either going the speed limit or slightly under it,

but he was not exceeding it.

Q How close did the right wheels of the Escort come to the curb when it weaved over towards the curb the first time?

A Within about six--approximately six inches.

Q What happened then after it came close to the curb the first time?

A He would drive along there for a short distance, then come back more toward the center of the roadway and then eventually go back over to the left and touch the lane divider lines again.

Q Again, was that a jerky type movement or smooth?

A No. He--it was relatively smooth.

Q The second time then, did the left wheels of the Escort again touch the lane divider between the right hand lane and the left hand lane?

A Yes. Each time he'd come right over to the white lines and touch them.

Q What did the Escort then do after it touched the white lines for the second time?

A It continued driving along the line for a short distance, then it would go back toward the center, and then it starts swaying over the right a second time.

Q And the second time, how close did the right wheels of the Escort get to the curb?

A It was approximately the same, approximately six inches is

all.

Q Now, I just heard you indicate that it would go from the right hand side, to the center, and then over to the left hand, and then from the left hand over to the curb, and then to the center, and then to the right hand or left hand again. Did the vehicle stop in the middle of the lane of travel as it was weaving back and forth or did it--or did it just weave straight--straight across and then straight back?

A No. It was--it was a real smooth, like he was going like this her, just back and forth

(Witness demonstrating with hands).

BY MR. FRAZIER:

Q How close were you to the Escort as it weaved towards the right hand curb the second time?

A Approximately fifty feet behind him.

Q And the Escort's still maintaining the speed limit?

A Yes.

Q What happened next?

A Once I--well, initially I began my observation west of Beech Daly. After I crossed Beech Daly, I put on my emergency flashers to pull him over.

Q Let me stop you at that point. What distance did the Escort travel from the point you first observed him weaving to the left, and then to the right, to the time

that you decided to activate your overhead lights?
A I would say approximately three, four hundred feet.
Q What was going through your mind as you made the observations that you just told us about?
A I didn't know at the time if he was intoxicated, if he was possibly falling asleep at the wheel, or if possibly he had some kind of a medical problem.
Q And is that why you activated your overhead lights?
A Yes.
Q Describe for us as specifically as you can what--what happened, what the Escort did when you activated your overhead lights?
A He pulled up into the parking lot of a--

MR. HILL: Objection, your Honor, at this point. He's decided to pull him over and nothing else is relevant.

MR. FRAZIER: Well, I think it is relevant. Counsel, I believe in his motion is asking that the charges be dismissed.

MR. HILL: That's correct.

MR. FRAZIER: He's asking that the OUIL charge be dismissed, and that the UBAL charge be dismissed, and I don't think counsel can limit his testimony in this matter to just what happened before the stop. If he's asking that all those other things be dismissed, we need to know,

APPENDIX Q

___ center of the lane straight for a while?

A A short period of time.

Q Okay. And, essentially, did you observe him go from the left to the right, from the right to the left, and then from the left to the right, and then right to the left essentially twice?

A Two to three times.

Q Yeah. And that was the extent of your observation of the traveling within the lane?

A That's correct.

Q Now, he never crossed the dividing lane from the right lane to the left lane, correct?

A No. He went right on to the dividing lane.

Q But he never--

A He did not go over to the other side of it.

Q He didn't go over to the other lane?

A No, he did not.

Q And he never hit the curb on the right side, correct?

A No, he did not.

Q So he always stayed entirely within his lane, correct?

A Uh--no, he didn't stay in between--in his lane because he went on to the bar lines.

Q So other than hitting the dividing line he stayed within his lane?

A He drove on the bar lines.

APPENDIX R

Q Okay. You understand that if you hit your ball on the line you're still within your court?

MR. FRAZIER: Objection. Relevance, your Honor.

BY MR. HILL:

Q But do you understand that?

THE COURT: I'll--I'll overrule.

MR. HILL: Thank you.

BY MR. HILL:

Q If you're serving and your ball hits the line but it's within the serving box, that's a good serve, isn't it?

A Yes.

Q Thank you.

A But if I'm playing tennis--

Q Thank you. You answered the question.

MR. FRAZIER: Well, your Honor, I object to counsel interrupting the witness.

MR. HILL: he'll have a chance on redirect.

BY MR. HILL:

Q Now, you've also indicated on direct examination that you didn't know what was going on with the defendant, correct?

A I indicated that I didn't know if he was falling asleep at the wheel, or if he is intoxicated, or if possibly he's having some type of a medical problem at the time.

Q Or there could have been something wrong with his car, correct?

A That's a possibility
Q Okay. Now, you did not give him a ticket for crossing lanes, did you?
A No, we are not allowed to. When we make an arrest for OUIL we are not allowed to write a ticket for whatever the stop was--
Q Oh, okay.
A --initially for.
Q He was not speeding?
A Um--Um--no.
Q You have to say yes or no; okay. His speed, however, was not excessively slow?
A No.
Q And the only reason you stopped him was because he was weaving, from my prospective, within his lane; and, from your prospective, weaving within his lane other than having his tire hit the bar line, is that correct?
A I stopped him because he was weaving back and forth from the right to the left.
Q Yeah. Within his lane or on the bar line?
A From the bar line to the edge of the roadway.
Q Yeah. And, certainly, in terms of the right side he was always within his lane?
A. Yes.
Q Okay.